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IN THE

Supreme Court of the United States

October Term, 1950.

No. 271

COMMONWEALTH OF PENNSYLVANIA, ex rel.
SIDNEY MASTER,
Petitioner,

v.

F. S. BALDI, Superintendent Philadelphia County Prison,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA.

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No.

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Petitioner,

v.

F. S. BALDI, SUPERINTENDENT PHILADELPHIA COUNTY PRISON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Sidney Master, respectfully prays that a *writ of certiorari* issue to review the decision of the Superior Court of Pennsylvania dated March 20, 1950, which upon certiorari by the respondent reversed the order of the Court of Quarter Sessions in and for Philadelphia County, of June 10, 1949, discharging petitioner from Philadelphia County Prison upon his petition for writ of habeas corpus. (166 Pa. Superior Ct. 413, 72 A. (2d) 150.)

Petitioner's petition to the Supreme Court of Pennsylvania for allowance of an appeal from said decision of the Superior Court of Pennsylvania was denied on May 27, 1950. The order of the Supreme Court of Pennsylvania was filed May 30, 1950.

A.

Statement of the Basis of Jurisdiction and Statement of the Case.

1.

The basis of jurisdiction of your Honorable Court is to determine whether or not petitioner's rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States have been violated or abridged by the introduction of an involuntary confession as evidence against him at his trial: *Watts v. Indiana,* 338 U. S. 49, 69 S. Ct. 1347, 93 L. Ed. 1801, *Com. ex rel. Schultz v. Smith,* 139 Pa. S. Ct. 357, 11 A. (2d) 656. The question thus presented is substantial, whether or not the statements contained in the alleged confession were independently established as true (which petitioner denies): *Watts v. Indiana, supra, Malinski v. New York,* 324 U. S. 401, 65 Sup. Ct. 781, 89 L. Ed 1029.

2.

Petitioner was indicted and tried for the crimes of robbery, burglary, receiving stolen goods. carrying a concealed deadly weapon, and other related offenses (129a, 395a-397a). On June 24, 1948 the jury by its verdict found petitioner guilty only of receiving stolen goods (129a, 151a) and, on November 10, 1948 after motion for a new trial was withdrawn, petitioner was sentenced to two and one-half years in the Philadelphia County Prison (15a).

At his trial the questioned confession was read into evidence (241a, 243a) after his objection to its introduction had been over-ruled by the trial court (240a-241a).

On March 24, 1949, petitioner, without benefit of counsel, petitioned for a writ of habeas corpus averring that he was illegally arrested by Philadelphia (Pennsylvania) detectives at Havre de Grace, Maryland; that he was illegally and forcibly brought by them into the Commonwealth of Pennsylvania, no extradition proceedings having been had;

and that he was thereafter illegally detained by the Philadelphia police for forty-four hours prior to a formal hearing before a magistrate (3a-7a, 442a). The answer, signed by the District Attorney, itself introduced the issue of the confession (10a) and that issue was raised and fully explored at the hearings on the petition for writ of habeas corpus (see especially 28a, 30a-39a, 44a-48a, 51a-52a, 55a-57a).

The hearing judge found that petitioner's constitutional rights had been violated (128a, 149a). His findings are best summarized in his own words (147a, 148a): "In the case before us the focal point of infection was the primary action of the detectives in making the arrest in Maryland without the authority of the State of Maryland. This arrest and removal of relator from Maryland in violation of the Uniform Criminal Extradition Act and the subsequent coerced confession and the indictments ostensibly found thereon, all occurring as parts of a single, continuous transaction, constituted a denial of due process which resulted in a lack of jurisdiction in the Court which tried relator. The whole proceeding was, therefore, illegal and, without doubt, would have been determined to be by the trial Court had the facts adduced before us under the petition for a writ of habeas corpus been called to its attention.

"The relator was illegally arrested by the Philadelphia police officers in Maryland, forcibly brought through Delaware into Pennsylvania in violation of the extradition laws, kept incommunicado until the confession, which was used to convict him, was coercively procured and was not given a hearing before a magistrate within forty-eight hours. The relator was thereby deprived of his liberty without due process of law. His conviction directly resulted from law violations reaching constitutional dignity." He ordered petitioner discharged (149a).

Upon the Commonwealth's appeal, in the nature of a certiorari, the Superior Court of Pennsylvania made many independent findings of fact diametrically opposed to those

of the hearing judge (448a-451a); concluded that, "in discharging relator the Court clearly exceeded its legal discretion in that the law was misapplied and the judgment exercised was manifestly unreasonable" (456a); and reversed the order of the hearing judge with the direction to refuse the writ of habeas corpus (457a).

3.

The essential facts as found by the hearing judge are contained in the following excerpts from his Opinion:

> "On April 23, 1947, one William Hallowell, while committing a robbery, shot and killed two Philadelphia policemen, and he himself was severely wounded. On the same date, he made a confession in which he implicated the relator, and immediately thereupon a search was instituted by the police for the relator, who was resident of the City of Philadelphia.
>
> "On April 24, 1947, three detectives from Philadelphia went to the race track at Havre de Grace, Maryland, looking for the relator, but were unable to find him.
>
> "On April 25, 1947, two of the three Philadelphia detectives returned to the race track at Havre de Grace, found the relator there, apprehended him, and took him to the office of the track manager, and returned with him to Philadelphia. No notification of this apprehension was given to any officers of the States of Maryland or Delaware, through which latter State they passed en route, and when the relator and the two detectives returned to Philadelphia on the night of April 25 they immediately went to a police and detective headquarters at 22nd and Hunting Park Avenue. At that place the relator was interrogated, and from thence he was taken to the Germantown Hospital, in Philadelphia, where Hallowell was languishing and in extremis from the wounds he had received. Following his confrontation with Hallowell the relator was returned to

the police station, where he was further interrogated, and his signed confession was obtained by the police. Prior to this time he was not permitted to see counsel or his relatives, although the detectives did permit him to telephone his family's lawyer before he left the State of Maryland. After the signature to the confession was obtained, the relator was permitted to see his two brothers in the station house, and later on in the evening, the family lawyer to whom he had made the telephone call from Maryland. Notwithstanding the fact that there was a warrant for his arrest and that he was at a station house in close custody of the police, he was not slated as a prisoner until the following day, April 26; nor was he taken before a Magistrate for a hearing until the next day, April 27, whereupon he was held by the Magistrate for the Grand Jury, charged with robbery, burglary, receiving stolen goods, carrying a concealed deadly weapon, and other related offenses. He was subsequently indicted, and on June 23, 1948, tried, found guilty of receiving stolen goods, and acquitted on all the other charges. On November 10, 1948, he was sentenced to a term of imprisonment of two and one half years. At that [sic] time of the filing of his petition he had served approximately five months of that term (128a-130a).

". . . at his trial relator repudiated the confession and asserted it was beaten out of him and that his signature was forcibly affixed to it, a detective holding his hand and compelling him to write his name. In support of his assertion relator himself testified. He was corroborated by two brothers, his father, and the family lawyer who testified to his battered physical condition shortly after the confession was obtained and his complaints to them that it had been beaten out of him. The detectives denied any force was used to procure the confession . . ." (138a).

* * *

"The relator testified that he was put under arrest at the track by the two detectives, taken with a friend named Hannon to the track office, and driven to Philadelphia; that the only stop was one for gasoline; that, on the ruse that he was going to the men's room, he succeeded in getting to a telephone and calling the family lawyer; that while speaking to the lawyer, one of the detectives ran up and grabbed the phone from him, and that no further stops were made until the party reached the station house.

"Hannon testified that he was called over to Masters who was standing between two men, in front of the secretary's office at the track. He says Masters said, 'I have been arrested. I want you to get hold of my dad.' One of the officers then interrogated Hannon on his connection with Masters and said, 'I believe we had better take him (Hannon) with us.' The detectives only 'released' Hannon because the track police 'vouched' for him. Hannon was warned by the detectives not to call the relator's father, else he might get himself in trouble. When Hannon went into the track police office, he understood he was under arrest because one detective said to the other, 'We had better take this fellow in, too.' Hannon's testimony is substantially corroborated by one of the detectives (139a-140a).

* * *

"It is eminently clear that Hannon was 'picked up' or arrested and then released only because the track police vouched for him. If Hannon was arrested merely because he admitted knowing Masters, certainly the relator who had been 'implicated' by Hallowell was arrested.

"This conclusion is further supported by the very circumstances of the case. One of the detectives testified on cross-examination: The killing by Hallowell of two Philadelphia police officers caused feeling to run

high; that Hallowell implicated Masters: that the entire police department wanted to 'get everybody involved.' This same detective testified at the trial which resulted in Masters' conviction that he 'was at the $10 window at Havre de Grace, Maryland, at the time of Sidney Masters' arrest.' The other detective testified before us that 'We had information that we may be able to *pick Sidney Masters up* at that $10 window;' that the track police 'asked us to give him the courtesy at that time when we did *apprehend* Sidney Masters, would we bring him over to his place, and being the police department, we thought we should give them that courtesy, and we did *take* Sidney Masters to Mr. Drayton's office.' He was then asked by the Court: 'You took him there?' and answered, 'Yes, we left him there. I left him in custody of Detective Regan' * * *. When asked the purpose of bringing Masters to the police station, the detective replied it was to let his superior 'know that we *had* Masters and we were back.'

"All of this evidence must be considered in the light of the further fact that a warrant had been issued for the relator before the detectives apprehended him at the race track.

"Under all the evidence, the Court finds that the relator was illegally arrested by two Philadelphia detectives on April 25, 1947 at Havre de Grace race track, Maryland, and brought by force to the police station at 22nd and Hunting Park Avenue, Philadelphia, whence he was taken by the police to Germantown Hospital and thence retaken to the police station. This was all done in violation of the extradition laws. From the moment of his arrest until his release on bail, the relator was illegally and wrongfully detained." (140a-142a)

* * *

". . . Was the confession, obtained during this illegal detention, coerced? That the confession was obtained as a result of the illegal detention is virtually admitted by the detectives. Masters had 'been identified as the man who had participated in holdups with William Hallowell' * * * and 'we must bring him back to our headquarters to interrogate him.' At the relator's trial, the same detective testified that the purpose was to obtain evidence against Masters by his admission: to 'get him to tell us his participation in the crimes he had committed.' This detective, when cross-examined about Goldstein and Fleckstein, who were also involved, said 'We went and asked him (Masters) about those men, *but he was out on bail at that time.*' So there is no doubt that the purpose of the illegal detention in the station house and the failure to produce the relator before a magistrate was to obtain the confession." (143a)

"Procuring the confession in this case was part and parcel of the relator's illegal seizure in Maryland and his forced removal to Pennsylvania in plain violation of law. The whole thing was a single, continuous transaction. Illegal force was used to get Masters in Maryland and to bring him here in order to obtain his confession. This gives rise to the presumption that force was similarly used to get the confession, Com. v. Harman, 4 Pa. 269 (1846), an inference certainly not rebutted by the Commonwealth. As against bland generalizations that the confession was 'voluntary,' there is the testimony of Masters' two brothers, his father and the family lawyer as to his battered physical condition after the confession was obtained and while he was still 'on ice'. Even if the testimony of the relatives were disregarded, there is that of a reputable member of the Bar, which corroborates the relator and his other witnesses as to Masters' condition. There was no contradiction of this evidence by the Commonwealth, either

at the main trial or in the habeas corpus proceeding before us. This leads only to the conclusion that physical force was used to obtain the confession.

"Considering the manner of relator's removal from Maryland to Pennsylvania and what transpired after he was brought to the police station house, even if he were not physically tortured into signing the confession, it is amply clear that the circumstances under which it was obtained were so inherently coercive as to be 'irreconcilable with the possession of mental freedom by a lone suspect against whom' their 'full coercive force is brought to bear.' . . ." (145a-146a)

The hearing judge then concluded as follows:

"The relator was illegally arrested by the Philadelphia police officers in Maryland, forcibly brought through Delaware into Pennsylvania in violation of the extradition laws, kept incommunicado until the confession, which was used to convict him, was coercively procured and was not given a hearing before a magistrate within forty-eight hours. The relator was thereby deprived of his liberty without due process of law. His conviction directly resulted from law violations reaching constitutional dignity.

"The matter being before us on habeas corpus because of the unconstitutionality of the proceedings by which the relator is being detailed in prison under sentence imposed as part of those proceedings, and there being no question before us involving a review of the action of the Court which imposed such sentence, including that of the grant of a new trial, and in view of our determination that those proceedings deprived the relator of the constitutional guarantee of due process of law, we accordingly grant the prayer of the relator and order that he be discharged forthwith." (148a-149a)

It will be noted that the hearing judge adverted to the testimony of petitioner, his two brothers, his father, and his family lawyer as to petitioner's "battered physical condition shortly after the confession was obtained" (138a, 146a). The hearing judge declared that, "This leads us only to the conclusion that physical force was used to obtain the confession" (146a), and he described the statement as "the subsequent coerced confession . . ." which "was coercively procured . . ." (148a). The testimony supporting the finding of the hearing judge is as follows.

Petitioner testified:

"A. I told them I didn't know nothing to make a confession about, as I wasn't involved. They told me to get up against the wall, and Lieutenant Summerscale said, 'All right', and he walked out, and Detective Regan and MacDonald and Ambrose started beating me, and they wouldn't stop until I made a confession. I said, 'I have no confession to make.' So, undoubtedly what they got from Hallowell they made up.

THE COURT: No. Do not state any conclusions. We are only interested in facts.

By MR. BERGER:

Q. Did they show you a paper?

A. About fifteen minutes after they beat me.

Q. What did you see on the paper?

A. I couldn't read; I was too battered up.

Q. What did they say to you?

A. They said to sign it. I told them I couldn't sign that paper, and they beat me again, and they held my hand and I signed it. (30a) * * *

A. This looks similar to the paper that they held my hand to sign.

Q. But you are not sure?

A. No, sir.

Q. Were you asked specific questions such as: What is your name? Answer, Sidney Master.

How old are you?

24 years.

What is your address?

A. After all, I was beat, and I couldn't hear nothing. I have one bad ear, and they kept bashing on it." (32a)

Petitioner's brother Bernard testified in corroboration that:

"He had a bruise on his right cheek. He had a welt on the back of his neck. He was all flushed. His shirt was torn open, and he was in a high state of—I would call it—hysteria, and I learned that he had been beaten." (45a)

Petitioner's brother Hyman testified in corroboration:

"His hair was mussed up; his face all flushed and bruised; his shirt was ripped open, down to about here (indicating), and the buttons were off; his neck and his chest down to about here (indicating) was all red—as much as I could see from where the shirt was open." (48a)

Frank Master, father of petitioner, gave further corroboration as follows:

"When I came in I saw his face is all red and bruised out; his chest was all red; his shirt was ripped open; the stomach was like a barrel." (52a)

Benjamin Abramson, Esq., petitioner's family lawyer testified he saw petitioner on the night of April 25 and that:

"A. His face was flushed; he had a bruise along his neck, and he complained of pains in his stomach to me.

Q. Before you saw him had you been told by the detectives anything about a confession?

A. No. Sidney told me that he had signed a confession.

Q. Did he tell you the manner in which his signature had been affixed to it?" (55a) • • •

"A. Yes. He said he had been beaten and forced to sign the confession." (56a)

Significantly, the pictures of petitioner which were submitted for the consideration of the jury at the main trial on the issue of petitioner's physical condition, after the confession was given by him, were taken two days after that confession was made (411a).

Despite the finding of the hearing judge that force was used to obtain the confession, and the above quoted evidence in support thereof, the Superior Court made a finding that the witnesses who corroborated petitioner's testimony that he was beaten merely testified "that when they saw relator after he had signed the confession his face was flushed and he had a bruise on his neck" (450a). The Court further found that "The Court below made no specific finding that the confession was obtained by physical violence, and no such finding could have been made without a capricious disregard of the credible testimony and the substantiating circumstances" (453a-454a).

The Superior Court did not reverse the finding of the hearing judge that petitioner was illegally arrested in Maryland and forcibly returned to Philadelphia, and that this constituted part of a single continuous transaction resulting in the obtaining of the questioned confession (145a-146a, 147a-148a). It found there was a conflict of testimony on this point. However, the Superior Court proceeded upon the assumption that even though these findings of the hearing judge were correct, such facts would not affect the issue of whether petitioner's constitutional rights had been violated.

It will be seen that the Superior Court vitiated and altered findings of fact made by the hearing judge which

were supported by competent evidence, though the Court pretended to recognize that, under *Com. ex rel. Mattox v. Supt. of County Prison,* 152 Pa. Sup. Ct. 167, 31 A. (2d) 576, its power of review in a habeas corpus proceeding is limited to an inquiry as to whether there is *any* evidence to support the order and that the Appellate Court shall not weigh conflicting evidence.

B.
The Questions Presented.

The following questions arise as a result of the action of the Superior Court of Pennsylvania reversing the order of the hearing judge:

1. Were relator's rights under the Fourteenth Amendment of the United States Constitution violated?

2. Where the Superior Court did not upset the finding of the hearing judge that the petitioner was illegally arrested in Maryland by Philadelphia detectives and forcibly removed by them to Pennsylvania, but rather decided that such facts do not deprive petitioner of due process of law, was not that decision in discord with applicable decisions of your Honorable Court?

3. Where the Superior Court did not upset the finding of the hearing judge that the illegal arrest of petitioner in Maryland by Philadelphia detectives and his forcible removal by them to Philadelphia was part of a single continuous transaction culminating in a coerced confession by petitioner, was not that Court in error in holding that petitioner's rights of due process were not violated?

C.
Reason Relied On for Allowance of the Writ.

1.

The Commonwealth's appeal was in the nature of a certiorari and hence, under Pennsylvania law, the Superior

Court could not review the merits of the case or inquire whether the judgment of the Court below was correct, it could not weigh conflicting evidence, but was limited in its review "to determine whether the order appealed from is supported by *any* evidence and whether the Court had jurisdiction to do the act complained of": *Com. ex rel. Mattox v. Supt. of County Prison,* 152 Pa. Sup. Ct. 167, 170, 171, 31 A. (2d) 576; *Com. ex rel. Johnson v. Dye,* 159 Pa. Sup. Ct. 542, 49 A. (2d) 195; *Com. ex rel. Mills v. Baldi,* 166 Pa. Sup. Ct. 321, 70 A. (2d) 439. (Emphasis supplied.)

The hearing judge had found (a) that the confession in question was extracted by physical force and (b) petitioner's illegal arrest and forcible removal from Maryland to Pennsylvania were part of a continuous transaction which resulted in the making of a confession before petitioner had opportunity to see counsel or friends. These facts were supported by petitioner's testimony (23a-66a, 300a-372a) and, in part, by direct admissions of three Philadelphia detectives on cross-examination (69a, 78a, 80a, 81a, 97a, 98a, 106a-109a, 119a, 123a). Nevertheless, the Superior Court reversed the first of the above findings and totally ignored the latter. It did so without overruling the *Mattox, Johnson* and *Mills* cases; indeed, it cited them. In so doing, the Superior Court acquiesced in a denial to petitioner of his rights to due process.

Since there is here a showing that force was applied, it is submitted that your Honorable Court does not leave to the State courts to determine whether the confession was voluntary or involuntary, but that you will make your own inquiry and determination: *Watts v. Indiana, supra* at page 52. It is believed that such inquiry will lead inescapably to the conclusion that the hearing judge correctly found that the confession was beaten out of petitioner and that petitioner was thereby deprived of the rights secured to him by the Fourteenth Amendment of the United States Constitution: *Watts v. Indiana, supra, Turner v. Pa.,* 338 U. S. 62, 69 S. Ct. 1352, 93 L. Ed. 1443, *Harris v. So. Caro-*

lina, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1440, *Malinski v. New York, supra, Ashcraft v. Tennessee,* 322 U. S. 143, 64 S. Ct. 921, 88 L. Ed. 1192.

Extracts of the testimony indicating that force was used to obtain the confession have been set out above. The facts and circumstances from which it must be concluded that petitioner was illegally arrested in Maryland appear in the Opinion of the Hearing Judge (139a-142a) which have been set forth in this petition at pages 4-9.

2.

The uncontroverted facts admitted by the Commonwealth and testified to by the detectives are:

1. Hallowell, a co-defendant of petitioner, shot and killed two Philadelphia policemen on April 23, 1947. Feeling ran high. Hallowell implicated Master (79a, 81a, 97a, 238a). The entire Philadelphia police department "wanted to get everybody involved" (78a-81a).

2. Petitioner was indicted with Hallowell on a number of bills of indictment but was convicted only of receiving stolen goods (8a, 151a).

3. A warrant for petitioner's arrest had been issued prior to April 24, 1947 (119a-120a).

4. Three Philadelphia detectives were sent to the Havre de Grace, Maryland, race track on April 24, 1947 on information that petitioner was there. They did not find him (8a, 67a-69a).

5. Two of the detectives returned to that race track on April 25, 1947 and found petitioner there. They *took* him to the office of the manager of the track police (8a, 97a, 106a). They picked up petitioner's friend, Hannon, at that time and "released" him only when track police vouched for his reputation (60a-62a, 73a, 107a). Hannon considered himself under arrest until so released (65a).

6. The track police requested the Philadelphia detectives that "when we did *apprehend* Sidney Master would we bring him over to his place and *being the police department* we thought we should give him that courtesy and we did *take* Sidney Master to Mr. Drayton's office" (97a).

7. Petitioner was returned to Philadelphia in the detectives' automobile (99a) without knowledge of local authorities and without the slightest compliance with extradition laws (84a-85a).

8. Petitioner was brought to the police station house at 22nd and Hunting Park Avenue, Philadelphia, Pa., where he was told the detectives had a warrant for him (8a).

9. Petitioner was taken by the police in a police squad car to Germantown Hospital, Philadelphia, where Hallowell was (101a, 109a, 111a, 113a).

10. Petitioner was then taken back to the police station house at 22nd and Hunting Park Avenue where the "confession" was procured from him (10a, 239a) *before* he was permitted to see counsel and at a time when only policemen were present (263a, 264a).

These unquestioned events and circumstances speak for themselves: "There comes a point where this Court should not be ignorant as judges of what we know as men": *Watts v. Indiana, supra,* 93 L. Ed. at 1805.

Philadelphia detectives whose fellow policemen had been killed by a man who implicated petitioner, went on instructions to Havre de Grace, Maryland, to get petitioner. A warrant for petitioner's arrest had issued in Philadelphia. The detectives could have caused petitioner's arreset and safe detention by Maryland authorities. They certainly did not go to Havre de Grace to have a friendly chat with petitioner, advise him that Philadelphia police were looking for him in connection with a murder, or extend a courteous invitation that he use their car to return to Philadelphia. To have done so would have been merely

to forewarn petitioner and enable him to flee. Moreover, had these been their purposes they would not have reported to the race track police.

Rather, the Philadelphia detectives meant business. They arrested Hannon merely because he was petitioner's friend. Certainly, then, they arrested petitioner who had been implicated by Hallowell.

It appears that petitioner was never thereafter out of the control of members of the Philadelphia police department, nor was he in the presence of friends (other than co-defendant Hallowell who was himself in custody) until after the confession had been taken. Not until then was he even "slated", much less brought before a magistrate.

The conclusion is inescapable that the confession was secured as a result of a continuous transaction starting at petitioner's apprehension and illegal arrest in Havre de Grace, Maryland, about five hours earlier.

Thus, leaving aside the matter of the physical beating administered to relator after he was taken back to the police station, we have a situation where the circumstances under which the confession was procured were so inherently coercive as to be "irreconcilable with the possession of mental freedom by a lone suspect against whom" the police department's "full coercive force is brought to bear" (*Ashcraft v. Tennessee, supra*) and to violate due process within the meaning of the *Watts, Harris* and *Turner* cases. It is clear beyond shadow of doubt that the whole purpose of relator's kidnapping and detention was to wrench the confession out of him.

> "To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process."

Mr. Justice Frankfurter, in *Watts v. Indiana,* 69 S. Ct. at 1350.

And as stated by Mr. Justice Douglas concurring in the same case, 69 S. Ct. at 1351:

> "detention without arraignment is a time-honored method for keeping an accused under the exclusive control of the police. They can then operate at their leisure. The accused is wholly at their mercy. He is without the aid of counsel or friends; and he is denied the protection of the magistrate. We should unequivocally condemn the procedure and stand ready to outlaw, as we did in Malinski v. New York, 324 U. S. 401, 89 L. ed. 1029, 65 S. Ct. 781, and Haley v. Ohio, 332 U. S 596, 92 L. ed. 224, 68 S. Ct. 302, any confession obtained during the period of the unlawful detention. The procedure breeds coerced confessions. It is the root of the evil. It is the procedure without which the inquisition could not flourish in the country."

3.

The decision sought to be reviewed does not question the findings of the hearing judge that (a) petitioner was illegally arrested in Maryland and forcibly brought into Pennsylvania or (b) that these illegal acts were part of a continuous transaction, the end result of which was the making of the questioned confession. That Court, relying on *Pettibone v. Nichols,* 203 U. S. 192, 27 S. Ct. 111, 51 L. Ed. 148; *Ker v. Illinois,* 119 U. S. 436, 7 S. Ct. 225, 30 L. Ed. 421; *Mahon v. Justice,* 127 U. S. 700, 8 S. Ct. 1204, 32 L. Ed. 283; *McMahan v. Hunter,* 150 F. 2d 498, certiorari denied, 326 U. S. 783, 66 S. Ct. 332, 90 L. Ed. 475; *Chandler v. United States,* 171 F. 2d 921, 934, certiorari denied, 336 U. S. 918, 68 S. Ct. 640, 93 L. Ed. 527; *Jackson v. Olson,* 18 Pa. 37; *Com. v. Kenney,* 80 Pa. Superior Ct. 418, 419, and 22 Am. Jur., Extradition, Sec. 65; Annotation, 165 A. L. R. 947-967, held that these facts do not constitute a violation of due process (449a). In so holding it is believed that the Superior Court has decided the case in a

manner which is in discord with the applicable decisions of your Honorable Court.

The cases relied upon by the Superior Court are not controlling for the very reason that the illegal acts of the Philadelphia detectives were part and parcel of the scheme or plan which resulted in the coerced confession.

Moreover, when those cases were decided it was thought that a State is "unaffected" by the wrong doing of its officers and therefore a prisoner could not complain that he had been forcibly brought from another jurisdiction to the State where the trial was held. The more recent decisions of your Honorable Court, however, definitely hold that a State *is* "affected" by the wrong doing of its officers and that a conviction obtained thereby cannot stand. *Brown v. Mississippi,* 297 U. S. 278, 65 S. Ct. 461 80 L. Ed. 682, *Chambers v. Florida,* 309 U. S. 227 60 S. Ct. 472 84 L. Ed. 617, *White v. Texas,* 309 U. S. 631, 60 S. Ct. 706, 84 L. Ed 989, *Ashcraft v Tennessee supra, Malinski v. New York, supra,* to which may be added *Watts v. Indiana, supra, Harris v. So. Carolina, supra,* and *Turner v. Pennsylvania, supra.* It is well settled that the fact that a State officer acts illegally cannot relieve a State of responsibility for his acts; *Screws v. United States,* 325 U. S. 91, 65 S. Ct. 1031, 89 L. Ed. 1495.

When the *Ker, Mahon* and *Pettibone* cases were decided, it was thought that there was no violation of the prisoner's rights as distinguished from those of the state from which he had been forcibly removed. Since then, the Uniform Criminal Extradition Law, which has been in force in Maryland since 1937, (See Code, 1939, Article XLI, Sections 13-39) has specifically endowed prisoners with protective, procedural and substantive rights, the violation of which cannot be blithely disregarded as beyond the power of the court to correct.

Your petitioner, therefore, believes that this application presents a case cognizable by your Honorable Court under the Constitution of the United States and the de-